



General Assembly

February Session, 2004

***Raised Bill No. 327***

LCO No. 560

\*00560\_\_\_\_\_LAB\*

Referred to Committee on Labor and Public Employees

Introduced by:  
(LAB)

***AN ACT CONCERNING FAMILY AND MEDICAL LEAVE FOR ORGAN DONATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-248a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Each permanent employee, as defined in subdivision (21) of  
4 section 5-196, shall be entitled to the following: (1) A maximum of  
5 twenty-four weeks of family leave of absence within any two-year  
6 period upon the birth or adoption of a child of such employee, or upon  
7 the serious illness of a child, spouse or parent of such employee; and  
8 (2) a maximum of twenty-four weeks of medical leave of absence  
9 within any two-year period upon the serious illness of such employee  
10 or in order for such employee to serve as an organ or bone marrow  
11 donor. Any such leave of absence shall be without pay. Upon the  
12 expiration of any such leave of absence, the employee shall be entitled  
13 (A) to return to the employee's original job from which the leave of  
14 absence was provided or, if not available, to an equivalent position  
15 with equivalent pay, except that in the case of a medical leave, if the  
16 employee is medically unable to perform the employee's original job

17 upon the expiration of such leave, the Personnel Division of the  
18 Department of Administrative Services shall endeavor to find other  
19 suitable work for such employee in state service, and (B) to all  
20 accumulated seniority, retirement, fringe benefit and other service  
21 credits the employee had at the commencement of such leave. Such  
22 service credits shall not accrue during the period of the leave of  
23 absence.

24 (b) The leave of absence benefits granted by this section shall be in  
25 addition to any other paid leave benefits and benefits provided under  
26 subdivision (7) of subsection (a) of section 46a-60 which are otherwise  
27 available to the employee.

28 (c) Any permanent employee who requests a medical leave of  
29 absence due to the employee's serious illness or a family leave of  
30 absence due to the serious illness of a child, spouse or parent pursuant  
31 to subsection (a) of this section shall be required by the employee's  
32 appointing authority, prior to the inception of such leave, to provide  
33 sufficient written certification from the physician of such employee,  
34 child, spouse or parent of the nature of such illness and its probable  
35 duration. For the purposes of this section, "serious illness" means an  
36 illness, injury, impairment or physical or mental condition that  
37 involves (1) inpatient care in a hospital, hospice or residential care  
38 facility, or (2) continuing treatment or continuing supervision by a  
39 health care provider.

40 (d) Any permanent employee who requests a medical leave of  
41 absence in order to serve as an organ or bone marrow donor pursuant  
42 to subsection (a) of this section shall be required by the employee's  
43 appointing authority, prior to the inception of such leave, to provide  
44 sufficient written certification from the physician of such employee of  
45 the proposed organ or bone marrow donation and the probable  
46 duration of the employee's recovery period from such donation.

47 ~~[(d)]~~ (e) Any permanent employee who requests a family leave of  
48 absence pursuant to subsection (a) of this section shall submit to the

49 employee's appointing authority, prior to the inception of such leave, a  
50 signed statement of the employee's intent to return to the employee's  
51 position in state service upon the termination of such leave.

52 [(e)] (f) Notwithstanding the provisions of subsection (b) of section  
53 38a-554, as amended, the state shall pay for the continuation of health  
54 insurance benefits for the employee during any leave of absence taken  
55 pursuant to this section. In order to continue any other health  
56 insurance coverages during such leave, the employee shall contribute  
57 that portion of the premium the employee would have been required  
58 to contribute had the employee remained an active employee during  
59 the leave period.

60 Sec. 2. Section 31-51ll of the general statutes, as amended by section  
61 2 of public act 03-213, is repealed and the following is substituted in  
62 lieu thereof (*Effective October 1, 2004*):

63 (a) Subject to section 31-51mm, an eligible employee shall be entitled  
64 to a total of sixteen workweeks of leave during any twenty-four-month  
65 period, such twenty-four-month period to be determined utilizing any  
66 one of the following methods: (1) Consecutive calendar years; (2) any  
67 fixed twenty-four-month period, such as two consecutive fiscal years  
68 or a twenty-four-month period measured forward from an employee's  
69 first date of employment; (3) a twenty-four-month period measured  
70 forward from an employee's first day of leave taken under sections 31-  
71 51kk to 31-51qq, inclusive; or (4) a rolling twenty-four-month period  
72 measured backward from an employee's first day of leave taken under  
73 sections 31-51kk to 31-51qq, inclusive. [.] Such leave may be used for  
74 one or more of the following:

75 [(1)] (A) Upon the birth of a son or daughter of the employee;

76 [(2)] (B) Upon the placement of a son or daughter with the employee  
77 for adoption or foster care;

78 [(3)] (C) In order to care for the spouse, or a son, daughter or parent

79 of the employee, if such spouse, son, daughter or parent has a serious  
80 health condition; [or]

81 [(4)] (D) Because of a serious health condition of the employee; or

82 (E) In order to serve as an organ or bone marrow donor.

83 (b) Entitlement to leave under [subdivision (1) or (2)] subparagraph  
84 (A) or (B) of subdivision (4) of subsection (a) of this section may accrue  
85 prior to the birth or placement of a son or daughter when such leave is  
86 required because of such impending birth or placement.

87 (c) (1) Leave under [subdivision (1) or (2)] subparagraph (A) or (B)  
88 of subdivision (4) of subsection (a) of this section for the birth or  
89 placement of a son or daughter may not be taken by an employee  
90 intermittently or on a reduced leave schedule unless the employee and  
91 the employer agree otherwise. Subject to subdivision (2) of this  
92 subsection concerning an alternative position, subdivision (2) of  
93 subsection (f) of this section concerning the duties of the employee and  
94 subdivision (5) of subsection (b) of section 31-51mm concerning  
95 sufficient certification, leave under [subdivision (3) or (4)]  
96 subparagraph (C) or (D) of subdivision (4) of subsection (a) of this  
97 section for a serious health condition may be taken intermittently or on  
98 a reduced leave schedule when medically necessary. The taking of  
99 leave intermittently or on a reduced leave schedule pursuant to this  
100 subsection shall not result in a reduction of the total amount of leave to  
101 which the employee is entitled under subsection (a) of this section  
102 beyond the amount of leave actually taken.

103 (2) If an employee requests intermittent leave or leave on a reduced  
104 leave schedule under [subdivision (3) or (4)] subparagraph (C), (D) or  
105 (E) of subdivision (4) of subsection (a) of this section that is foreseeable  
106 based on planned medical treatment, the employer may require the  
107 employee to transfer temporarily to an available alternative position  
108 offered by the employer for which the employee is qualified and that  
109 (A) has equivalent pay and benefits and (B) better accommodates

110 recurring periods of leave than the regular employment position of the  
111 employee, provided the exercise of this authority shall not conflict  
112 with any provision of a collective bargaining agreement between such  
113 employer and a labor organization which is the collective bargaining  
114 representative of the unit of which the employee is a part.

115 (d) Except as provided in subsection (e) of this section, leave  
116 granted under subsection (a) of this section may consist of unpaid  
117 leave.

118 (e) (1) If an employer provides paid leave for fewer than sixteen  
119 workweeks, the additional weeks of leave necessary to attain the  
120 sixteen workweeks of leave required under sections 5-248a, as  
121 amended by this act, and 31-51kk to 31-51qq, inclusive, may be  
122 provided without compensation.

123 (2) (A) An eligible employee may elect, or an employer may require  
124 the employee, to substitute any of the accrued paid vacation leave,  
125 personal leave or family leave of the employee for leave provided  
126 under [subdivision (1), (2) or (3)] subparagraph (A), (B) or (C) of  
127 subdivision (4) of subsection (a) of this section for any part of this  
128 sixteen-week period of such leave under said subsection.

129 (B) An eligible employee may elect, or an employer may require the  
130 employee, to substitute any of the accrued paid vacation leave,  
131 personal leave, or medical or sick leave of the employee for leave  
132 provided under [subdivision (3) or (4)] subparagraph (C), (D) or (E) of  
133 subdivision (4) of subsection (a) of this section for any part of the  
134 sixteen-week period of such leave under said subsection, except that  
135 nothing in section 5-248a, as amended by this act, or 31-51kk to 31-  
136 51qq, inclusive, shall require an employer to provide paid sick leave or  
137 paid medical leave in any situation in which such employer would not  
138 normally provide any such paid leave.

139 (f) (1) In any case in which the necessity for leave under  
140 [subdivision (1) or (2)] subparagraph (A) or (B) of subdivision (4) of

141 subsection (a) of this section is foreseeable based on an expected birth  
 142 or placement of a son or daughter, the employee shall provide the  
 143 employer with not less than thirty days' notice, before the date of the  
 144 leave is to begin, of the employee's intention to take leave under said  
 145 [subdivision (1) or (2)] subparagraph (A) or (B), except that if the date  
 146 of the birth or placement of a son or daughter requires leave to begin  
 147 in less than thirty days, the employee shall provide such notice as is  
 148 practicable.

149 (2) In any case in which the necessity for leave under [subdivision  
 150 (3) or (4)] subparagraph (C), (D) or (E) of subdivision (4) of subsection  
 151 (a) of this section is foreseeable based on planned medical treatment,  
 152 the employee (A) shall make a reasonable effort to schedule the  
 153 treatment so as not to disrupt unduly the operations of the employer,  
 154 subject to the approval of the health care provider of the employee or  
 155 the health care provider of the son, daughter, spouse or parent of the  
 156 employee, as appropriate; and (B) shall provide the employer with not  
 157 less than thirty days' notice, before the date the leave is to begin, of the  
 158 employee's intention to take leave under said [subdivision (3) or (4)]  
 159 subparagraph (C), (D) or (E), except that if the date of the treatment  
 160 requires leave to begin in less than thirty days, the employee shall  
 161 provide such notice as is practicable.

162 (g) In any case in which a husband and wife entitled to leave under  
 163 subsection (a) of this section are employed by the same employer, the  
 164 aggregate number of workweeks of leave to which both may be  
 165 entitled may be limited to sixteen workweeks during any twenty-four-  
 166 month period, if such leave is taken: (1) Under [subdivision (1) or (2)]  
 167 subparagraph (A) or (B) of subdivision (4) of subsection (a) of this  
 168 section; or (2) to care for a sick parent under [subdivision (3)]  
 169 subparagraph (C) of said subsection (a).

170 (h) Unpaid leave taken pursuant to sections 5-248a, as amended by  
 171 this act, and 31-51kk to 31-51qq, inclusive, shall not be construed to  
 172 affect an employee's qualification for exemption under chapter 558.

173 (i) Notwithstanding the provisions of sections 5-248a, as amended  
174 by this act, and 31-51kk to 31-51qq, inclusive, all further rights granted  
175 by federal law shall remain in effect.

176 Sec. 3. Section 31-51mm of the general statutes is repealed and the  
177 following is substituted in lieu thereof (*Effective October 1, 2004*):

178 (a) An employer may require that request for leave based on a  
179 serious health condition in [subdivision (3) or (4)] subparagraph (C) or  
180 (D) of subdivision (4) of subsection (a) of section 31-51ll, as amended  
181 by this act, be supported by a certification issued by the health care  
182 provider of the eligible employee or of the son, daughter, spouse or  
183 parent of the employee, as appropriate. The employee shall provide, in  
184 a timely manner, a copy of such certification to the employer.

185 (b) Certification provided under subsection (a) of this section shall  
186 be sufficient if it states:

187 (1) The date on which the serious health condition commenced;

188 (2) The probable duration of the condition;

189 (3) The appropriate medical facts within the knowledge of the  
190 health care provider regarding the condition;

191 (4) (A) For purposes of leave under [subdivision (3)] subparagraph  
192 (C) of subdivision (4) of subsection (a) of section 31-51ll, as amended  
193 by this act, a statement that the eligible employee is needed to care for  
194 the son, daughter, spouse or parent and an estimate of the amount of  
195 time that such employee needs to care for the son, daughter, spouse or  
196 parent; and (B) for purposes of leave under [subdivision (4)]  
197 subparagraph (D) of subdivision (4) of subsection (a) of section 31-51ll,  
198 as amended by this act, a statement that the employee is unable to  
199 perform the functions of the position of the employee;

200 (5) In the case of certification for intermittent leave or leave on a  
201 reduced leave schedule for planned medical treatment, the dates on

202 which such treatment is expected to be given and the duration of such  
203 treatment;

204 (6) In the case of certification for intermittent leave or leave on a  
205 reduced leave schedule under [subdivision (4)] subparagraph (D) of  
206 subdivision (4) of subsection (a) of section 31-51ll, as amended by this  
207 act, a statement of the medical necessity of the intermittent leave or  
208 leave on a reduced leave schedule, and the expected duration of the  
209 intermittent leave or reduced leave schedule; and

210 (7) In the case of certification for intermittent leave or leave on a  
211 reduced leave schedule under [subdivision (3)] subparagraph (C) of  
212 subdivision (4) of subsection (a) of section 31-51ll, as amended by this  
213 act, a statement that the employee's intermittent leave or leave on a  
214 reduced leave schedule is necessary for the care of the son, daughter,  
215 parent or spouse who has a serious health condition, or will assist in  
216 their recovery, and the expected duration and schedule of the  
217 intermittent leave or reduced leave schedule.

218 (c) (1) In any case in which the employer has reason to doubt the  
219 validity of the certification provided under subsection (a) of this  
220 section for leave under [subdivision (3) or (4)] subparagraph (C) or (D)  
221 of subdivision (4) of subsection (a) of section 31-51ll, as amended by  
222 this act, the employer may require, at the expense of the employer, that  
223 the eligible employee obtain the opinion of a second health care  
224 provider designated or approved by the employer concerning any  
225 information certified under subsection (b) of this section for such leave.

226 (2) A health care provider designated or approved under  
227 subdivision (1) of this subsection shall not be employed on a regular  
228 basis by the employer.

229 (d) (1) In any case in which the second opinion described in  
230 subsection (c) of this section differs from the opinion in the original  
231 certification provided under subsection (a) of this section, the  
232 employer may require, at the expense of the employer, that the



233 employee obtain the opinion of a third health care provider designated  
234 or approved jointly by the employer and the employee concerning the  
235 information certified under subsection (b) of this section.

236 (2) The opinion of the third health care provider concerning the  
237 information certified under subsection (b) of this section shall be  
238 considered to be final and shall be binding on the employer and the  
239 employee.

240 (e) The employer may require that the eligible employee obtain  
241 subsequent recertifications on a reasonable basis, provided the  
242 standards for determining what constitutes a reasonable basis for  
243 recertification may be governed by a collective bargaining agreement  
244 between such employer and a labor organization which is the  
245 collective bargaining representative of the unit of which the worker is  
246 a part if such a collective bargaining agreement is in effect. Unless  
247 otherwise required by the employee's health care provider, the  
248 employer may not require recertification more than once during a  
249 thirty-day period and, in any case, may not unreasonably require  
250 recertification. The employer shall pay for any recertification that is not  
251 covered by the employee's health insurance.

252 Sec. 4. Section 31-51nn of the general statutes is repealed and the  
253 following is substituted in lieu thereof (*Effective October 1, 2004*):

254 (a) Any eligible employee who takes leave under section 31-51ll, as  
255 amended by this act, for the intended purpose of the leave shall be  
256 entitled on return from such leave (1) to be restored by the employer to  
257 the position of employment held by the employee when the leave  
258 commenced; (2) if the original position of employment is not available,  
259 to be restored to an equivalent position with equivalent employment  
260 benefits, pay and other terms and conditions of employment; or (3) in  
261 the case of a medical leave, if the employee is medically unable to  
262 perform the employee's original job upon the expiration of such leave,  
263 to be transferred to work suitable to such employee's physical  
264 condition if such work is available.

265 (b) The taking of leave under section 31-51ll, as amended by this act,  
 266 shall not result in the loss of any employment benefit accrued prior to  
 267 the date on which the leave commenced.

268 (c) Nothing in this section shall be construed to entitle any restored  
 269 employee to (1) the accrual of any seniority or employment benefits  
 270 during any period of leave; or (2) any right, benefit or position of  
 271 employment other than any right, benefit or position to which the  
 272 employee would have been entitled had the employee not taken the  
 273 leave.

274 (d) As a condition of restoration under subsection (a) of this section  
 275 for an employee who has taken leave under [subdivision (4)]  
 276 subparagraph (D) of subdivision (4) of subsection (a) of section 31-51ll,  
 277 as amended by this act, the employer may have a uniformly applied  
 278 practice or policy that requires each such employee to receive  
 279 certification from the health care provider of the employee that the  
 280 employee is able to resume work, except that nothing in this  
 281 subsection shall supersede a valid law of this state or a collective  
 282 bargaining agreement that governs the return to work of such  
 283 employees.

284 (e) Nothing in this section shall be construed to prohibit an  
 285 employer from requiring an employee on leave under section 31-51ll,  
 286 as amended by this act, to report periodically to the employer on the  
 287 status and intention of the employee to return to work.

288 (f) Employees may have additional rights under other state and  
 289 federal law, including rights under the federal Americans with  
 290 Disabilities Act of 1990. Nothing in sections 5-248a and 31-51kk to 31-  
 291 51qq, inclusive, shall limit any such additional rights.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>

Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

***Statement of Purpose:***

To expand the state family and medical leave provisions to authorize leave for medical procedures and recovery relative to organ and bone marrow donation.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*